CG 1430 (5)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Second Appeal No. 564 of 2004 Single Bench

APPELLANT:
(Plaintiff)

Narayan Prasad, Son of Late Shri Jainarayan Agarwal, Aged about 53 years, Resident of Sakti, Tehsil Sakti, District Janjgir-Champa (C.G.)

Versus

RESPONDENTS:
(Defendants)

1. Mst. Narayan Devi, Widow of Late Rambhagat Agarwal, aged about 72 years.
2. Ramavtar, Son of Late Rambhagat Agarwal, aged about 49 years.
3. Rajaram, son of Late Rambhagat Agarwal, aged about 39 years.
4. Trilokinath, son of Late Rambhagat Agarwal, aged about 35 years.
5. Chandan, son of Late Rambhagat Agarwal, aged about 24 years.
6. Ku. Puja, daughter of Late Rambhagat Agarwal, aged about 18 years.
7. Mst. Sharda Devi, Widow of Late Pavan Kumar Agarwal, aged about 44 years.
8. Yogesh, son of Late Pavan Kumar Agarwal, aged about 17 years.
9. Ravi, son of Late Pavan Kumar Agarwal, aged about 15 years.

P.R. No. 2699/09
Presented by Shri Sushil Sahu
dated 31-11-09

10. Manish, son of Late Pavan Kumar Agarwal, aged about 14 years.

Sr. No.8 to 10 are minors through their natural guardian mother Mst. Sharda Devi, Widow of Late Pavan Kumar Agarwal, all resident of Ward No.12, Sakti, Station Road, Tehsil Sakti, District Janjgir-Champa (C.G.).

11. Smt. Meera, wife of Govind Agarwal, aged about 30 years, resident of Gharghoda, Presently residing at LIG-31, Lochan Nagar, Raigarh.

12. Smt. Sulochan, wife of Shri Rajkuamr Agarwal, aged about 28 years, resident of Behind Laxmi Talkies Bilaspur Firm Jagdish Prasad Rajkumar.

13. Smt. Prema Devi Choubey @ Prem Lata, wife of Omprakash Agarwal, aged about 43 years, resident of K-12, Kranti Nagar, Behind Hanuman Mandir, Bilaspur, Firm-Ramavtar Textiles.

14. Smt. Kantadevi, wife of Ashok Kumar Agarwal, aged about 32 years, resident of Sapos, Tehsil Dabra, Presently residing at MIG-11, Mukut Nagar, Raigarh (C.G.).

15. Smt. Sharda Devi, wife of Mangturam Agarwal, aged about 32 years, resident of Shivrinarayan, Tehsil Pamgarh, District

(7)

Janjgir-Champa, Firm-Shankar Vashtralaya, Bombay Market-Shivrinarayan (C.G.).

SECOND APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCECDURE, 1908

(25)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Second Appeal No.564 of 2004

Appellant/
Plaintiff :- Narayan Prasad

Vs

Respondent/
Defendants :- Mst.Narayan Devi & Others

Appellant by Shri Rajeev Shrivastava, Advocate.

JUDGEMENT
(Delivered on 03/03/2005)

Heard on admission

The appellant has preferred this second appeal as he is aggrieved by the judgement and decree dated 16.08.2004 passed by Additional District Judge, Sakti in Civil Appeal No. 18-A/2003 arising out of judgment dated 15.09.2003 passed by Civil Judge, Class-I, Sakti in Civil Suit No. 245-A/2002 and by which the learned first Appellate Court has dismissed the appeal upholding the order of dismissal passed by the trial Court. (Parties hereinafter shall be referred to as per their description in the trial Court.)

This instant appeal has been preferred by the appellant/plaintiff on the following substantial question of law;

(i) Whether both the Courts below were justified in refusing the decree of eviction under Section 12(1)(c) of the Chhattisgarh Accommodation Control Act and,

(ii) Whether both the Courts below were justified in holding that the appellant/plaintiff has failed to prove his bonafide need to the disputed property.

The case of the plaintiff before the trial Court was that he is the owner of the suit premises and the defendants are his tenants on a monthly rent of

Rs. 400/- and the plaintiff requires the suit premises for the purpose of business of his sons. He further submits that the defendants have not paid rent for the last 16 months and they have constructed their own house and even then, they are not vacating the disputed premises.

The defendants in their written statement denied the averments of the plaint and stated that the plaintiff is not the owner of the suit premises and it was taken by the defendants from one Shri Mansha Ram for yearly rent of Rs.180/- in the year 1947. It was further pleaded by the defendants that the plaintiff has suitable residential and non-residential accommodation in Shakti town and the instant suit has been filed by suppressing the material facts and the plaintiff does not require the suit premises bonafidely.

Learned trial Court dismissed the suit by holding that the defendants are the tenant of the suit premises for the yearly rent of Rs. 180/- and they have paid all the rents payable and that the plaintiff has failed to prove that the suit premises is required bonafidely for the residential or business purposes of his sons and he does not have reasonably suitable accommodation in Sakti town for the above purpose.

The appeal of the plaintiff was also dismissed by the first Appellate Court by the impugned judgement and decree by recording a finding that the Court below has not committed any illegality by arriving to a conclusion that the yearly rent was fixed at Rs. 180/- which is established by the oral and documentary evidence adduced by the defendants whereas the plaintiff has not led any evidence to establish that the monthly rent was Rs.400/-. The first Appellate Court has also arrived to the conclusion that the plaintiff does not require the suit accommodation for bonafide necessity of residence or business of his sons as the plaintiff has deliberately suppressed the fact that he is possessed of various houses in Sakti which are suitable for the above purpose and also that P.W.1 Narayan has admitted in para-14 of his statement recorded before the Court that the house recorded in the name of his mother, is in possession of his son Vimal Kumar. The Court below has also arrived to the conclusion that the plaintiff has deliberately suppressed the fact the he is the owner of the house known as Dharmshala in which there are certain shops in the ownership of the plaintiff by virtue of Ex.D/9 and further that on the basis of the statement of Vimal Kumar that the suit premises is required for his younger brother Rajesh Kumar, who is unemployed, in future when he would be married.

Both the Courts below have rejected the contention of the plaintiff of bonafide necessity on the ground that the plaintiff has failed to prove as to what business his sons are proposing to do for which the suit accommodation in question is required and thus, on the basis of objective analysis of the evidence on record, learned both the Courts below have arrived to the concurrent findings that the plaintiff has failed to establish that he requires the suit premises for residential purposes of his sons or for business purposes of his sons. The bonafide need of the plaintiff has been further doubted that the plaintiff has deliberately suppressed the fact that he has further alternative accommodation available in Sakti.

Learned counsel for the appellant/plaintiff has placed his reliance on the judgment passed in the matter of ***Akhileshwar Kumar and others Vs. Mustaqim and others*** reported in ***(2003) 1 SCC, 462*** and submits that once the landlord proves his bonafides to the objective satisfaction of the court of facts, the choice of accommodation which would satisfy his requirement should be left to landlord's subjective choice, court cannot impose its own choice. Learned counsel relying on the judgement of M.P.High Court in the matters of ***Sheela Rani and others Vs. Manish Kumar*** reported in ***1997(1) MPLJ, 224,*** submits that a landlord cannot be denied from occupying his own property when he needs the same bonafidely as has been held in the judgement under reference and as already held in the foregoing paragraphs.

However, In the facts and circumstances of the case, the above reference of learned counsel for the appellant/plaintiff is of no help to the plaintiff as both the Courts below have arrived to a concurrent finding whereby the very bonafide need of the plaintiff that he requires the suit accommodation for residential or business purposes of his sons has been disbelieved by the Courts of facts. The plaintiff has deliberately suppressed the availability of the alternative accommodation which is evident from the evidence adduced by the plaintiff. In this case also it has been held that the choice of the landlord must be reasonable and not whimsical. The above concurrent finding of facts is based on objective analysis of the material available on record and the same are the questions of facts, which is not open for challenge in the second appeal.

The other submission of learned counsel for the appellant/plaintiff is that the defendants have denied the ownership of the plaintiff and therefore, learned

both the Courts below ought to have passed a decree of eviction under Section 12(1)(c) of Chhattisgarh Accommodation Control Act.

However, both the Courts below have arrived to the conclusion on the basis of material available on record and pleadings of both the parties that the defendants have acknowledged the ownership of the ancestors of the plaintiff namely Mansharam and they have further submitted that they were paying the rent to Mansharam and thereafter the rent was being paid to father of the plaintiff namely Jai Narayan at the rate of Rs. 180/- per annum. So in the above circumstances, it cannot be said that the defendants have denied the title of the plaintiff over the suit property and therefore a decree of eviction under Section 12(1)(c) of the Act, could not be passed against them.

Thus, the admission of the defendants regarding the ownership of the father of the plaintiff, can not be construed that the defendants have done something which is likely affect adversely and substantially the interest of the landlord which is a condition precedent for passing a decree under Section 12(1)(c) of the Act.

The essential requirement for claiming a decree under Section 12(1)(e) and (f) of the Act are that there must be a bonafide requirement of the accommodation for the landlord or other persons mentioned in the clause and the landlord should not have any other reasonably suitable alternative accommodation of his own for the above purpose. Both the Courts below after discussing the evidence and pleadings of the parties, held that the plaintiff has deliberately suppressed the availability of the alternative accommodation with him, dismissed the appeal of the appellant/plaintiff.

After considering the facts and circumstances of the case and material available on record, I am of the opinion that there is no infirmity in the above concurrent findings of both the Courts below and there is no substantial question of law involved for adjudication of this appeal and the appeal is devoid of any merit. Accordingly, the instant second appeal deserves to be dismissed and it is dismissed.

However, in the above circumstances, there shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge